

General Information Letter: Information provided by taxpayer is insufficient to support a determination that no bulk sale report is required.

August 28, 2002

Dear:

This is in response to your follow-up letter dated August 21, 2002, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL. In your letter you state as follows:

I am writing in response to your letter dated August 16, 2002. We are requesting a written determination that the transaction detailed below is exempt from Section 902(d) of the Illinois Income Tax Act and the companion provisions of the Illinois Retailer's Occupation Tax Act.

The transaction is as follows:

Our client, COMPANY is a home builder/real estate developer. They have contracted to sell XXX acres of undeveloped real estate located in CITY, Illinois. There is no building on the real estate, its completely vacant.

COMPANY is in the business of building homes and developing real estate. This transaction is in no way liquidating, nor outside the scope of its usual course of business. COMPANY will continue its regular course of business, of building homes and developing real estate, following the completion of the transaction.

As we related in our previous letter, Illinois Income Tax Act (IITA) Section 902(d) requires withholding of tax from the consideration rendered in the sale or transfer of "the major part" of certain specified assets "outside the usual course of business". The purpose of IITA Section 902(d) is to prevent the seller or transferor from liquidating assets and absconding with the proceeds without satisfying outstanding Illinois income tax obligations. The penalty for failure to effectuate bulk sales withholding when required results in a shifting of liability for amounts owed but unpaid by the seller/transferor to the purchaser or transferee up to the value of consideration received.

As mentioned before, any ruling issued by the Department as to the applicability or not to a particular transaction of bulk sales withholding is extremely fact-dependent. In this follow-up correspondence, you disclose that COMPANY, the transferor, is engaged in the business of building homes

(presumably on real estate) and developing real estate and that it is preparing to transfer XXX acres of its real estate "portfolio". Furthermore, your representation that the transfer of XXX acres of undeveloped land is within "the scope of its usual business" appears inconsistent with your statement that the transferor's business is the development of real property and building houses. Notwithstanding your representations that COMPANY intends to continue building homes and developing real estate after this transaction is concluded, the dictates of IITA Section 902(d) are plain. If XXX acres comprises over 50% of the value of the total real estate owned by the transferor, bulk sales withholding must be implemented. We are therefore constrained to refuse your letter ruling request.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax